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CIRCULAR

OF

THOMAS H. BAYLY, OF VIRGINIA,

TO HIS CONSTITUENTS.

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CIRCULAR.

To my Constituents :

The most eventful session of Congress which has ever been held under the Constitution has just terminated. On no other occasions have so many questions, upon the determination of which the very existence of the Government depended, occupied its deliberations. The public mind is still agitated in respect to them; and although I am worn down with its protracted labors, and am anxious to return to my home, from which I have been absent for near eleven months, yet I feel it to be my duty to linger here long enough to pen this address to you. I would rather appear before you in person, but that is impossible.

I desire to review the different measures to which I have alluded, and I prefer to do it in the order in which they became laws.

The first in that order is the act proposing to the State of Texas the establishment of her northern and western boundary, the relinquishment of all territory claimed by her exterior to that boundary, and all her claims upon the United States, and establishing a territorial government for New Mexico.

This act has three distinct features. First, the proposal to Texas as to her northern and western boundary. Second, the government provided for New Mexico. Third, the provision which is made for the Texan debt. As it rests with Texas herself to accept or reject the proposal in respect to her boundary made to her, it would seem that, standing by itself, disconnected with other matters, there could be nothing objectionable in it. The territorial government for New Mexico is in the usual form and without any restriction as to slavery. If, therefore, it was disconnected with extraneous considerations, it is impossible there would have been a vote against it in either House

of Congress. Next as to the Texan debt. Texas, while she was an independent Republic, contracted heavy liabilities. She pledged for their payment her revenues. But when she was admitted into this Union she surrendered to us her ships, forts, arsenals, custom-houses, custom-house revenues, her arms and munitions of war, and her public buildings, with their sites. It would seem that when we took her means of paying her debt, which were specifically pledged for its redemption, we took them "*cum onere*"—subject to the lien upon them; and that we are bound for those debts, especially as the means which we hold are more than sufficient for their discharge. It is said, however, that in the resolutions of annexation it is stipulated that the United States should not be liable for the debts of Texas. But it must be remembered that the creditors of Texas were no parties to that stipulation, and consequently are not bound by it. Such being the case, the opinion has extensively prevailed, and has been daily gaining strength with the statesmen of the country, that we are bound for the debts of Texas. It would seem, therefore, that there ought to be but little objection to the provision for them; and there would not be, if the question was not connected with others. But the subject of slavery has been connected with all of these questions—and there lies the whole difficulty. It is said we dismember Texas. But it cannot be done without her consent; and cannot we trust her to protect her own interest? It is replied that we bribe her to consent. Let us examine this matter, and see the whole extent of this bribe. There has been shown to me an official statement, which, I believe, Texas has never allowed to be published, showing where the debt of Texas is held. That statement shows

that very little of it is held in Texas. I should have been quite sure of this without seeing the document; for her debt was contracted during her war for independence, when her people were poor, and taxed to the full extent of their capacity to bear taxation; and the certainty is, her loans were contracted elsewhere. Few, therefore, of the people of Texas have any interest in this matter as bond-holders. Texas is not taxing her people to pay her debt. The bill under consideration will relieve them from no burden which they now feel; and they have, therefore, but little direct interest in this view of the case. Indeed they have less than the people of Virginia. It will be recollected that General Hamilton, many years ago, disposed of James river bonds, guarantied by the State, and Texas obtained the benefit. Virginia paid the bonds, although she received no money. Events beyond his control made it impossible for him to refund; but, in the most honorable manner, he hypothecated Texan bonds as security to Virginia. That security will become available, and to the extent of the debt, about one hundred and thirty thousand dollars, principal and interest, if my memory serves me, will the Virginia treasury be relieved, and our people, too, in the shape of taxes. But will any one say that Virginia is bribed? Or that she will be influenced at all by what I have referred to?

Besides, the United States, in the bill we have passed, has acknowledged her obligation to provide for the debt of Texas. She will, therefore, know that even if she reject this bill, we cannot hereafter repudiate that obligation without disgrace.

The interest which Texas has in the bill is the interest which every State has in preserving its credit and honor. It cannot be doubted that it will add ultimately greatly to her prosperity to have the incubus of her public debt removed from her shoulders. Without credit, she can construct no improvements to develop her vast resources; in a condition of repudiation, men of character and capital are loath to connect their fortunes with hers; the fear that one day or another she will resort to heavy taxation to pay her debt, deters emigration from her borders. Remove that incubus, and her strides to prosperity will be long and rapid. She will be in a condition to be divided into two States, if it shall be desirable, long before New Mexico will be in a condition to come into the Union as a State. Indeed, at no distant day, she will be in a condition in which her right to be formed into four States, in addition to the present State, secured in the articles of annexation, and reasserted in the bill under consideration, would be enforced.

The question which will be submitted to Texas will be, whether her prosperity will be promoted by this bill. If it will not, she will reject it. If it will, she will accept it. If she will be benefited and strengthened by this bill, so will the South be. Whatever contributes to the strength of one of the southern States contributes to the strength of all. There can be no conflict in the interest of Texas and the other southern States. I am willing to trust Texas to decide where she is directly interested, and where we are indirectly, but decidedly interested on the same side with her. And the more so because I believe she will decide wisely.

It is also said that the bill converts slave territory into free soil. This assumes two propositions absolutely irreconcilable with each other; yet both of them must be established before the truth of the assertion can be sustained. It assumes that the territory transferred is Texian territory, and that the constitution and laws of Texas do not extend to it. If it be Texian territory in which slavery exists, so it will continue to exist after the transfer; for the act establishing a territorial government does not change its character. If it be not Texian territory, then its character also remains unchanged, and slave territory is not converted into free soil.

The assertion I am commenting upon is not only untrue, but the reverse of it is true. The bill converts forty-three thousand six hundred and thirty-seven square miles of free soil into slave territory, if the people residing upon it shall so decide when they form a constitution preparatory to coming into the Union as a State. By the resolutions of annexation, it is provided: "New States, of convenient size, not exceeding four in number, in addition to the said State of Texas, and having sufficient population, may hereafter, by consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution; and such States as may be formed out of that portion of said territory lying south of 36° 30' of north latitude, commonly known as the Missouri compromise line, shall be admitted into the Union *with or without slavery, as the people of each State asking admission may desire*. And in such State or States as shall be formed out of said territory north of said Missouri compromise line, *slavery or involuntary servitude (except for crime) shall be prohibited*." Most of the territory last referred to is included within the limits of New Mexico.

The act establishing a territorial government for New Mexico provides, "that when admitted as a State, the said Territory, or any portion of the same, shall be received into the Union, *with or without*

“slavery, as their constitution may prescribe at the time of their admission.” The absolute prohibition of slavery north of 36° 30' is removed by this provision.

But it is said that slavery is prohibited in New Mexico by Mexican law. How can that be if, as is contended, all of it east of the Rio Grande, which contains nearly the whole of her population, be Texian territory? But suppose those who deny the title of Texas, and maintain that all the territory within the limits of New Mexico is Mexican territory, are right; still I deny that there will be any Mexican law in force in that territory which will prohibit slavery. I am not going into the question, which has been so ably discussed, whether the Mexican laws prohibiting slavery were abrogated or not by the conquest and treaty. It *was* the opinion of the South that they were abrogated; and our support of the Clayton compromise was based upon it. Be that, however, as it may, it is clear beyond cavil or doubt that the territorial bills abrogate all Mexican laws and substitute others. The civil law is the law of Mexico. The territorial bills recognize the existence of the common law. The section relative to the jurisdiction of the courts declares that “the supreme and district courts respectively shall possess chancery and common law jurisdiction.” To administer Mexican law? Certainly not; but the common law and the chancery law derived from England. It may be said that African slavery cannot exist under that law. I know there is an *obiter dictum* of Lord Mansfield to that effect. It is but a *dictum*, for the case of Somerset turned upon the want of a remedy. Both Lord Talbot and Lord Hardwicke decided otherwise; and so has that great jurist, Sir William Scott, afterwards Lord Stowell, as late as 1827, in the celebrated case of the slave Grace. Besides, we all know that slavery was introduced into the British Colonies of America in the absence of a statute, and solely under the protection of the common law. But I shall not go into that question. In this case it is unnecessary; for the territorial bills and the fugitive slave bill each recognize the legality of slavery in the Territories. In the former it is enacted that—

“Writs of error and appeals, from the final decisions of said supreme court shall be allowed and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand

dollars, except only that in all cases involving title to slaves, the said writs of error or appeals shall be allowed and decided by the said supreme court without regard to the value of the matter, property, or title in controversy; and except also that a writ of error or appeal shall also be allowed to the Supreme Court of the United States from the decision of the said supreme court created by this act, or of any judge thereof, upon any writ of habeas corpus involving the question of personal freedom.”

It will be perceived that there are two classes of cases here provided for. The last, between the negro and his master, involving the question of his personal freedom. The first, between other parties, involving title to slaves. This last clearly contemplates the existence of slavery in the territories.

Besides this, the act providing for the recapture of fugitive slaves throughout contemplates the escape of slaves from our Territories. It enacts: “that when any person held to service or labor in any State or Territory, or in the District of Columbia, shall escape,” &c. Slavery is prohibited in Minnesota and Oregon; and if it is also prohibited in Utah and New Mexico, our only other Territories, then there is no subject to which a part of that law can refer.

But this is not all. The New Mexican bill not only recognizes the legality of slavery within the Territory, but it contains clauses which will restrain the territorial legislature from abolishing it. They are in the one declaring, that the question is to be decided by the people when they form a State Constitution, and of course not before; and in the other, in these words: “No citizen of the United States shall be deprived of his life, liberty, or property, in said Territory, except by the judgment of his peers and the laws of the land.”

The person and the laws referred to, of course, are correlative. These words are taken from “the great charter,” and they have an ascertained and fixed meaning. It protects, inviolably, vested rights; and so it has always been held in England.

But this clause was unnecessary; for the territorial Legislatures, in the absence of it, could not have abolished slavery. This I established, I think, fully in a speech I made on this subject on the 3d of August, 1848. But I will not repeat what I then said. They would be restrained by the provision of the Constitution, which declares that private property shall not be taken for public use, without just compensation. Except “for public use,” it cannot be invaded at all, either with or without compensation.

It thus appears that Texas has not been bribed to surrender slave territory to free-soilism.

The two territorial bills are framed precisely after the model which the South itself has furnished. Her own doctrine of non-intervention, that doctrine which leaves to the people to be affected by them the right to frame the institutions under which they are to live. The doctrine that lies at the foundation of our system of government, and to vindicate which our Revolution was waged—that doctrine is triumphant, as far as these two Territories are concerned.

I have said that the doctrine of non-intervention was the South's own doctrine. It is the doctrine deliberately recognized as the true doctrine during Mr. Jefferson's administration. I referred in detail to the imposing circumstances under which it was done in the speech I made in the House of Representatives on the 16th of May, 1848. It is the doctrine always maintained by Mr. Calhoun, and which was advocated in the address of the southern members of Congress. His celebrated resolution of 1847 declares:

"That it is a fundamental principle in our political creed that a people, in forming a constitution, have the unconditional right to form and adopt the government which they may think best calculated to secure their liberty, prosperity, and happiness; and that, in conformity thereto, no other condition is imposed by the Federal Constitution on a State, in order to be admitted into this Union, except that its constitution shall be republican; and that the imposition of any other by Congress would not only be in violation of the Constitution, but in direct conflict with the principle on which our political system rests."

In his speech, supporting this resolution, Mr. Calhoun said:

"Sir, I hold it to be a fundamental principle of our political system, that the people have a right to establish what government they may think proper for themselves; that every State about to become a member of this Union has a right to form its own government as it pleases; and that, in order to be admitted, there is but one qualification, and that is, that the government shall be republican."

It will be recollected that prior to the meeting of the southern members of Congress in 1849, I was requested to draft and present the resolutions which were the basis of its action. I was upon the committee of thirteen which reported the Address; and so upon the sub-committee of five which framed it; and I know personally that no provision of that Address was more deliberately considered than the following:

"What we propose in this connection is, to make

a few remarks on what the North alleges, erroneously, to be the issue between us and them.

"So far from maintaining the doctrine which the issue implies, we hold that the Federal Government has no right to extend or restrict slavery, no more than to establish or abolish it; nor has it any right whatever to distinguish between the domestic institutions of one State or section and another, in order to favor the one and discourage the other. As the federal representative of each and all the States, it is bound to deal out, within the sphere of its powers, equal and exact justice and favor to all. To act otherwise, to undertake to discriminate between the domestic institutions of one and another, would be to act in total subversion of the end for which it was established—to be the common protector and guardian of all. Entertaining these opinions, we ask not, as the North alleges we do, for the extension of slavery. That would make a discrimination in our favor as unjust and unconstitutional as the discrimination they ask against us in their favor. It is not for them nor for the Federal Government to determine whether our domestic institution is good or bad, or whether it should be repressed or preserved. It belongs to us, and us only, to decide such questions. What, then, we do insist on is, not to extend slavery, but that we shall not be prohibited from emigrating, with our property, into the Territories of the United States, because we are slaveholders; or, in other words, that we shall not on that account be disfranchised of a privilege possessed by all others, citizens and foreigners, without discrimination as to character, profession, or color. All, whether savage, barbarian, or civilized, may freely enter and remain, we only being excluded."

That paragraph was inserted in the address at my suggestion. I said to Mr. Calhoun that nothing was weakening us so much at the North as the constant assertion, which was believed by many, that we invoked the power of this Government to extend slavery, and that we ought to disavow it in the most emphatic terms. He entirely agreed with me, and he drew the paragraph just quoted. When we reported an Address to the Southern members, that portion of it was assailed, as they will recollect, and I defended it for the reasons I had suggested in favor of its insertion. The Southern members, by an overwhelming majority, sustained it. The Southern Address was extensively circulated in my district, and warmly approved by a vast majority of you. The territorial bills are in exact accordance with the principles laid down in it; and if, therefore, I had had any doubt as to my vote upon them, it would have been dissipated by what I

regard as virtual instruction from you. But I had no doubt. I have not changed any of the views which I have formerly expressed on this subject, and which you have approved.

For these reasons I am of opinion that the adoption of the measures under consideration was right in itself. But let us look to the alternatives which were before us. It was well known to me that an influential party in Congress, at the head of whom, in the House, were Mr. VINTON and Mr. SCHENCK, of Ohio, opposed the Texan boundary bill with the territorial government for New Mexico, such as I have described, with the purpose of carrying through the Texian proposal as a separate measure, of defeating the territorial bills, and bringing in New Mexico as a State, with her constitution prohibiting African slavery. Their votes on the occasion sufficiently establish this. The scheme of bringing in New Mexico as a State was a cherished one of General Taylor and his party. In a speech I made on the 17th of July, a copy of which will accompany this, I expressed my views fully concerning it; and I will not repeat them here. Although the present Administration preferred the establishment of territorial governments to the admission of New Mexico as a State, yet I did not doubt that if the Texian and New Mexican bills failed, all of its power would have been exerted to carry the Texian bill as a separate measure, and then have admitted New Mexico as a State. There were elements enough which could have been combined to effect this purpose. And I have no doubt whatever that it would have been effected in the contingency I have mentioned.

The only other alternative was the adjournment of Congress without doing anything. And this I considered equivalent to civil war, as a few words will show.

There was a controversy between the Administration and Texas, as to the boundary of New Mexico. Texas was raising troops to enforce her jurisdiction in Santa Fé. The President had expressed his determination to resist them with the army of the United States. Thus civil war was inevitable, if the dispute was not composed—a civil war which would not have been confined to Texas, but would have extended to all of the southern States. The detachment of our army in New Mexico was small, and the probability is, it would have been overcome by Texas in the first instance. An effort would be made to reinforce it. This, the southern States would have interposed to prevent, and thus the conflict would have become general, and the days of our Union been numbered. All wars are cruel and desolating enough; but civil war

has, through all time, been proverbially so. Of all the scourges with which sinful man was ever punished, that of civil war has been the most cruel. If I had voted against the measures I am discussing, and they had failed by my vote, and civil war, with all of its horrors, had ensued, how could I have returned to my district and looked my confiding constituents in the face? The vote I gave I considered one between a territorial bill for New Mexico—such as I have described it—or the admission of New Mexico as a State, or civil war. I know others, wiser than myself, thought differently. But I had to act upon my own convictions, not upon theirs, as much as I respected them. I do not mean to condemn their vote, which I am quite sure was as patriotic as my own; I only mean to state the views which directed my own course.

The vote on the passage of the bill was, one hundred and eight for it, and ninety-seven against it. Of the southern Representatives, fifty-two were for the bill, and thirty against it—of the Virginia delegation, eight for the bill and five against it. Every Free-soiler in Congress denounced and voted against it.

The bill as it passed, with Mr. Pearce's line, leaves to Texas thirty-three thousand three hundred and thirty-five square miles of territory more than Mr. Clay's line; and it leaves Texas thirty-six thousand four hundred and forty-five square miles more than the State constitution of New Mexico, formed under the instigation of the late Administration, if, indeed, it was not written in Washington, as Mr. Webster predicted it would be, in his speech delivered in 1848.

I have quoted the whole extract in the speech already referred to, and which I send herewith. But I beg leave to quote a part of it here. He said:

"They (the people of New Mexico) have no notion of our institutions, or of any free institutions. They have no notion of popular government! Why, not the slightest—not the slightest on earth. And the question is asked, what will be their constitution? It is farcical to talk of such a people making a constitution. They do not know the meaning of the term. They do not know its import; they know nothing at all about it. AND I CAN TELL YOU, SIR, THAT WHEN WE HAVE MADE IT A TERRITORY, AND WISH TO MAKE IT A STATE, SUCH A CONSTITUTION AS THE EXECUTIVE POWER OF THIS GOVERNMENT THINKS FIT TO SEND TO THEM, WILL BE SENT AND ADOPTED. THE CONSTITUTION OF OUR FELLOW CITIZENS OF NEW MEXICO WILL BE FRAMED IN THE CITY OF WASHINGTON."

The act establishing a territorial government for Utah is precisely like the one establishing a territorial government for New Mexico; and it met with but little opposition from southern members. Nearly all of us voted for it.

My views in respect to the admission of California as a State, and of the proceedings which led to it, are fully expressed in the speech I made on 17th July last. In them I think a gross outrage has been committed. Who are the chief authors of it are pointed out in the speech referred to. But I am bound to say, in that frankness which should characterize the intercourse between representative and constituent, that I regard it as irremediable. I do not think a dissolution of the Union would mend the matter. This, however, is a question for the people themselves to decide. As your representative I resisted the bill, but it has passed; and now it is for you to decide what course you will take. I have expressed my opinion frankly; but let Virginia decide as she may, I shall yield my will to hers; and whatever fortune may betide her, she will have in none of her citizens a more loyal son than in me.

To the act providing for the delivery up of fugitive slaves, I gave an active and hearty support. Its importance to the border slaveholding States cannot be well overrated. Its provisions are most stringent. It authorizes the appointment of a sufficient number of commissioners in every State to carry its provisions into effect. It makes it the duty of the marshal of the United States to execute the warrants; subjects him to a fine of a thousand dollars if he refuse to receive the warrant, or "to use all proper means diligently to execute it;" makes him liable for the value of the slave if he allows him to escape, "*whether with or without his assent*;" and if the master or his agent makes affidavit that he fears that the fugitive will be rescued from him, it requires the marshal to summon a sufficient force to prevent it, and to convey the fugitive to the State from whence he had fled. And it provides that the expense should be borne by the United States. The efficiency of this law has been tested, and it exceeds the anticipations of its most sanguine friends. A few facts will show its importance. It is estimated that fifteen hundred slaves escape from their masters annually. Those who run away are generally the young and most valuable; so the annual loss falls but little, if any, below a million of dollars. Besides this pecuniary loss, every one that escapes subtracts from the representative population of the southern States, and adds to that of the northern. The operation of this law will not only be to enable the master to recapture the fugitive slave when

he escapes, but the certainty of a recapture will deter him from attempting to run away. The inefficiency of the former law greatly encouraged negroes to attempt an escape.

The last in the series of measures concerning slavery is the law prohibiting the bringing of slaves into the District of Columbia for sale. It does no more than restore the law to the condition in which it was at the time of the cession by Maryland. It is very similar to the one suggested by Mr. Randolph, a number of years ago, and proposed by Mr. Tyler, as a Senator from Virginia, in 1832. I voted, however, against the bill, because I was unwilling that Congress should legislate in any manner in respect to slavery, and for other reasons, which will readily suggest themselves.

It is now fourteen years since I entered public life. Twelve of them have been spent in legislative bodies. During that time I have given a countless number of votes on every variety of subject. And yet, with pride I say it, I have never given but one vote—that on the Texan boundary bill—of which those who have elected me have ever complained. If, therefore, that vote was wrong, I think I may claim some indulgence. But it was not wrong. I never considered any question with more anxiety and care in my life, because I knew the importance of it, and I declare I never gave a vote in the correctness of which I have more confidence. And if I am to be sent into retirement in consequence of it, I shall go with a clear conviction that I have honestly discharged my duty, and I shall change without a regret a life of strife and trouble for one of contentment and peace. I can return to that seclusion from which you forced me with less regret than I left it.

I hear through various channels of a strange complaint of me in portions of my district. It is, that I have not this session been as active upon the slavery issue as usual. If by this it is meant that I have not been as attentive in voting and as energetic in my personal intercourse with members as usual, every member of Congress will bear testimony that it is unfounded. I have attended more consultations and have taken a more active part upon the questions concerning slavery, in everything but speaking, than I ever did at any former session of Congress. It is true that I have not spoken upon those questions as often as I did at former sessions, for the very reason that on those occasions I had said all that I had to say; and I did not wish to do what is so common—repeat myself. If any views have been presented at this Congress which had not been presented before, I confess I have not heard them. Those questions never presented themselves in a new

aspect, but in the scheme to bring in New Mexico as a State, pending the controversy with Texas. In reference to that, I made the speech of the 17th July, and although it was presented in a new aspect, I believe no other speech was made in reference to it. It is much easier to discuss an old subject than a new one; so in taking the course I did, it cannot be said that I consulted my personal comfort.

Besides this, it must be recollected that I was at the head of the most important committee of the House—the one charged with most of its business. In my official character I was compelled to speak almost every day and very often many times. Those were business speeches, and they did not go into the party presses. But the *Congressional Globe* will show that I have during this session made ten times as many speeches as I ever did at any former one. This, however, was not a matter of choice with me, but of necessity.

In conclusion of this address allow me to say, that the tide of abolitionism, which has so long been on the flood, for the first time for many years is on the ebb. The patriotic men at the North have seen the mischief which it threatened, and they have expressed their determination to resist it. I am for acting towards them as I would act in private life. If my neighbor who had wronged me manifested signs of repentance, I would encourage it. If he were to do me justice, I would forgive him. But if, after his show of a returning sense of justice, he were to repeat his aggressions, my treatment of him would be the sterner.

My ardent prayer is that those patriotic men may be successful, for if they fail this Union cannot stand; and I am free to say that I should look upon its dissolution as a great calamity. Under its protection we have grown in greatness and power with a rapidity without a parallel in the history of nations. Our territory extends from the tropics to the frozen regions of the North, and from the Atlantic to the Pacific, embracing almost

every variety of soil and production. Our commerce whitens every sea, our products are found in every market, our rights are respected by every nation.

Dissolve this Union, and one of the great ends of government is gone. The great end of government is protection of persons and property against foreign and domestic wrong. The rights of nations are respected in proportion to their power. If we had been the nation in 1812 which we are now, does any one suppose we would have had the war of that year? Dissolve this Union, and each fragment will be weaker than we were then.

With the data derived from the past, the imagination is bewildered with the future. If the Union lasts, can any one put a limit to our greatness? But if it be dissolved who can guaranty the future? But with all of my attachment for the Union, I do not wish to be understood as believing its dissolution would be the greatest of calamities. There is one greater—the submission to outrage, and oppression under it.

One word to my party friends. I do not think there is any occasion for a split of our party in consequence of the difference of our views about the questions I have been discussing. I am quite sure that the minority of our delegation were as patriotic as the majority. We all equally had the best interests of our constituents in view. There was no difference of opinion among us as to the proceedings in California, which, in my opinion, are the only serious wrongs done to the South in the series of measures which Congress has adopted. If we differ with each other, we differ with our opponents still more. What, then, are we to gain by crimination and recrimination among ourselves? I hope these suggestions may be excused. They are made with honest motives.

TH: H. BAYLY.

WASHINGTON, October 7, 1850.